

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

**IN RE: DIGITEK PRODUCT LIABILITY
LITIGATION**

MDL NO. 1968

THIS DOCUMENT RELATES ONLY TO:

Scottie Vega, individually and as next friend of
Christopher Vega, a Minor and surviving natural
child of Mimi Rivera-Vega, Deceased

MDL No. 2:09-cv-0768

Plaintiff,

v.

Actavis Totowa, LLC, et al,

**PLAINTIFF'S EX PARTE APPLICATION TO ENLARGE THE TIME TO
RESPOND TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT
AND MOTIONS TO EXCLUDE EXPERTS**

(Pacer Docket Nos. 522-529 - *In re Digitek*, 08-md-1968
and Pacer Docket Nos. 55-56 - *In re Vega v. Actavis* 09-cv-0768)

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

Pursuant to *Federal Rule of Civil Procedure* 6(b)(1)(A), Plaintiffs hereby move that this Court enlarge the amount of time that the Plaintiff has to respond to Defendants' recently filed Motions for Summary Judgment and Motions to Exclude Experts (Pacer Docket Nos. 522-529 (*In re Digitek*, 08-md-1968) and Pacer Docket Nos. 55-56 (*In re Vega v. Actavis* 09-cv-0768)).

A similar Ex Parte Application was filed in the related MDL case *In re Digitek*, 08-md-1968, as all of the motions are related and counsel for Scottie Vega will be doing much of the work on all of these Motion in both actions (See Pacer Docket No. 532).

Good cause exists in that Defendants' motions, which are designed to terminate this and all Digitek related cases, are both legally and factually intensive and will require significant time on the part of the attorneys to research and write. Further, the parties have still not completed the depositions of all of the defendants' experts, including Dr. William H. Frishman whose deposition is scheduled for August 10, 2011. Plaintiff's counsel is diligently working to respond to the Motions, but two weeks is insufficient and an additional two weeks is needed to complete the depositions and prepare the Oppositions. Defense counsel indicated he would not oppose a one-week extension of time, but he was unwilling to agree to a two-week extension of time.

Under the current schedule, Plaintiff's Oppositions are due August 17, 2011. Plaintiff requests that his time to respond be enlarged to permit filing as late as Thursday, September 8, 2011, which will give him a total of 30 days to respond to these motions. Plaintiff is flexible on the deadline the Court wishes to set for the Defendants' Reply Briefs and the time to hear the motions. Plaintiffs request that the Court set the parameters of a hearing date and then permit all parties to meet and confer to propose a mutually acceptable hearing date. Currently, Reply Briefs are due September 1, 2011, and the hearing is scheduled for September 14-15, 2011.

This motion is made pursuant to *Federal Rules of Civil Procedure*, Rule 6(b) and the Court's inherent authority to control its docket.

This motion is based upon this Application and attached exhibits, the points and authorities, the supporting declaration of counsel, and such evidence and argument as may be presented at the hearing.

Date: August 9, 2011.

Respectfully submitted,

WILLIAMSON & RUSNAK

/s/ Cyndi M. Rusnak

JIMMY WILLIAMSON

SBN: 21624100

MICHAEL W. KERENSKY

SBN: 11331500

CYNDI M. RUSNAK

SBN: 24007964

4310 Yoakum Boulevard

Houston, Texas 77006

713/223-3330

713/223-0001 Facsimile

**Attorneys for Scottie Vega, Individually and
As Next Friend of Christopher Vega,
A Minor and Surviving Natural Child of
Mimi Rivera-Vega, Deceased.**

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of August, 2011, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Matthew P. Moriarty, Co -Lead Counsel
Richard A. Dean, Co-Lead Counsel
TUCKER ELLIS & WEST LLP
925 Euclid Avenue, Suite 1150
Cleveland, OH 44115-1414
*Attorneys for Defendants Actavis Inc.,
Actavis Elizabeth LLC, and Actavis Totowa LLC*

SHOOK, HARDY & BACON LLP
Harvey L. Kaplan, Co-Lead Counsel
Madeleine M. McDonough, Co-Lead Counsel
2555 Grand Blvd.
Kansas City, Missouri 64108-2613
*Attorneys for Mylan Pharmaceuticals Inc.,
Mylan Bertek Pharmaceuticals Inc., and UDL
Laboratories, Inc.*

Hunter Ahern
SHOOK, HARDY & BACON LLP
JP Morgan Chase Tower
600 Travis Street, Suite 1600
Houston, Texas 77002-2992
*Attorneys for Mylan Pharmaceuticals Inc.,
Mylan Bertek Pharmaceuticals Inc., and UDL
Laboratories, Inc.*

Fred Thompson, III
Motley Rice, LLC
28 Bridgeside Blvd.
Mt. Pleasant, SC 29464
Plaintiffs' Co-Lead Counsel

Via Email (ftthompson@motleyrice.com)

/s/ Cyndi M. Rusnak
Cyndi M. Rusnak